

118495 *LIEBOWITZ*

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206474

DATE: May 27, 1982

MATTER OF: International Business Investments

DIGEST:

1. Requirement that bidders show evidence of possession of State security service license properly relates to responsibility despite solicitation language indicating that it affects responsiveness.
2. Contracting officer's determination that small business is ineligible for award for failure to evidence possession of required State license must be referred to the Small Business Administration for consideration under the certificate of competency procedure.

International Business Investments (IBI) protests the determination by the Department of Justice (Justice) to reject its bid as nonresponsive under solicitation No. 2M-10159, a small business set-aside for security guard services. IBI asserts that its bid was rejected for failure to contain a copy of a valid State security service license certificate, which determination was actually one of nonresponsibility and therefore should have been referred to the Small Business Administration (SBA) for consideration under its certificate of competency (COC) procedure.

The solicitation stated that:

"Offers will be considered as non-responsive to this solicitation unless the offeror fulfills the following conditions and accompanies his offer with the documentation required below: * * *

8. Provide copy of license to operate security service in Commonwealth of Virginia."

Four of six bidders which submitted timely bids, including IBI, were found nonresponsive by the contracting officer for failure to include a copy of such a license with their bids. Justice proposes to award the contract to the Eccles Security Agency, Inc., the lower bidder of the two companies which apparently submitted a copy of a license with their bids. Justice argues that the requirement was properly designated as one relating to responsiveness, and that IBI's protest is untimely because it alleges a defect apparent in the solicitation (i.e., the designation of an alleged responsibility criterion as pertaining to responsiveness), but was not filed until after bid opening. Justice also argues that the protest is academic, in any event, because IBI was not the low bidder and would not be entitled to award even if it were correct.

We need not decide the question of the timeliness of IBI's protest since IBI was not the low bidder and, therefore, ineligible for an immediate award. Therefore, Justice was not required to refer the question of IBI's competency to SBA even if IBI is otherwise right concerning the nature of the requirement and the necessity to refer a negative determination to SBA. International Business Investments, Inc., et al., 60 Comp. Gen. 275 (1981), 81-1 CPD 125. IBI's protest is denied.

Nevertheless, since Justice is withholding award pending our decision and the record indicates that the low bidder, Puget Sound Services, was rejected as nonresponsive for failure to furnish a copy of the required license with its bid, we will address the issue.

Where, as here, an agency finds that a bidder is unacceptable because of failure to evidence possession of a specifically required State license, the determination constitutes a finding of nonresponsibility, which, in the case of a small business, under the terms of the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I, 1977), must be referred by the agency to the SBA for final disposition under the COC procedure. No exceptions from the referral procedure are contemplated or contained in the act or in the applicable regulations. Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132; What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD 179.

Accordingly, we recommend that Justice, which improperly considered this a matter of responsiveness, make a determination as to the responsibility of Puget Sound Services. If this results in a negative determination, Justice should refer the question of the low bidder's eligibility to the SBA for consideration under the COC procedure. International Business Investments, Inc., et al., supra.

for *Wilton J. Aronson*
Comptroller General
of the United States